

AMENDED IN SENATE SEPTEMBER 3, 2015

AMENDED IN SENATE MAY 19, 2015

AMENDED IN ASSEMBLY APRIL 27, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1352**

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**Introduced by Assembly Member Eggman**

February 27, 2015

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An act to add Section 1203.43 to the Penal Code, relating to deferred entry of judgment.

LEGISLATIVE COUNSEL’S DIGEST

AB 1352, as amended, Eggman. Deferred entry of judgment: withdrawal of plea.

Existing law allows judgment to be deferred with respect to a defendant who is charged with certain crimes involving possession of controlled substances and who meets certain criteria, including that he or she has no prior convictions for any offense involving controlled substances and has had no felony convictions within the 5 years prior, as specified. Existing law prohibits the record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program from being used in any way that could result in the denial of employment, benefit, license, or certificate.

This bill would require a court to allow a defendant who was granted deferred entry of judgment on or after ~~January 1, 1997, after pleading guilty or nolo contendere to the charged offense~~ *January 1, 1997, who has performed satisfactorily during the period in which deferred entry of judgment was granted, and for whom the criminal charge or charges were dismissed, as specified*, to withdraw his or her plea and enter a

plea of not guilty, and would require the court to dismiss the complaint or information against the defendant, if the defendant performed satisfactorily during the deferred entry of judgment period and the defendant attests that the plea may result in the denial or loss to the defendant of any employment, benefit, license, or certificate, including, but not limited to, causing a noncitizen defendant to potentially be found inadmissible, deportable, or subject to any other kind of adverse immigration consequence. The bill would require the Judicial Council to develop a form to allow the defendant to make this attestation. Pursuant to the bill, the completion, signing, and submission of the form with specified documentation would be presumed to satisfy the requirement for the withdrawal of the plea and dismissal of the complaint. *defendant. If court records showing the case resolution are no longer available, the bill would require that the defendant's declaration, under penalty of perjury, that the charges were dismissed after he or she completed the requirements, be presumed to be true. By expanding the application of the crime of perjury, the bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1203.43 is added to the Penal Code, to  
2 read:  
3 1203.43. (a) (1) The Legislature finds and declares that the  
4 statement in Section 1000.4, that “successful completion of a  
5 deferred entry of judgment program shall not, without the  
6 defendant’s consent, be used in any way that could result in the  
7 denial of any employment, benefit, license, or certificate”  
8 constitutes misinformation about the actual consequences of  
9 making a plea in the case of some defendants, including all  
10 noncitizen defendants, because the disposition of the case may

1 cause adverse consequences, including adverse immigration  
2 consequences.

3 (2) Accordingly, the Legislature finds and declares that based  
4 on this misinformation and the potential harm, the defendant's  
5 prior plea is invalid.

6 ~~(b) In any case in which a defendant was granted deferred entry~~  
7 ~~of judgment on or after January 1, 1997, after pleading guilty or~~  
8 ~~nolo contendere to the charged offense, the defendant shall be~~  
9 ~~permitted by the court to withdraw the plea of guilty or nolo~~  
10 ~~contendere and enter a plea of not guilty, and thereafter the court~~  
11 ~~shall dismiss the complaint or information against the defendant,~~  
12 ~~if the defendant attests to both of the following:~~

13 ~~(1) The charges were dismissed after the defendant performed~~  
14 ~~satisfactorily during the deferred entry of judgment period.~~

15 ~~(2) The plea of guilty or nolo contendere may result in the denial~~  
16 ~~or loss to the defendant of any employment, benefit, license, or~~  
17 ~~certificate, including, but not limited to, causing a noncitizen~~  
18 ~~defendant to potentially be found inadmissible, deportable, or~~  
19 ~~subject to any other kind of adverse immigration consequence.~~

20 ~~(c) The Judicial Council shall, by June 1, 2016, develop a form~~  
21 ~~that allows a defendant to attest to the information described in~~  
22 ~~paragraphs (1) and (2) of subdivision (b).~~

23 ~~(d) The defendant shall submit documentation of the dismissal~~  
24 ~~of charges or satisfactory participation in, or completion of,~~  
25 ~~diversion programming. The completion, signing, and submission~~  
26 ~~by the defendant of the form described in subdivision (c) with the~~  
27 ~~documentation specified in this subdivision shall be presumed to~~  
28 ~~satisfy the requirements for withdrawal of the plea and dismissal~~  
29 ~~of the complaint or information against the defendant.~~

30 *(b) For the above-specified reason, in any case in which a*  
31 *defendant was granted deferred entry of judgment on or after*  
32 *January 1, 1997, has performed satisfactorily during the period*  
33 *in which deferred entry of judgment was granted, and for whom*  
34 *the criminal charge or charges were dismissed pursuant to Section*  
35 *1000.3, the court shall, upon request of the defendant, permit the*  
36 *defendant to withdraw the plea of guilty or nolo contendere and*  
37 *enter a plea of not guilty, and the court shall dismiss the complaint*  
38 *or information against the defendant. If court records showing the*  
39 *case resolution are no longer available, the defendant's*  
40 *declaration, under penalty of perjury, that the charges were*

1 *dismissed after he or she completed the requirements for deferred*  
2 *entry of judgment, shall be presumed to be true.*

3 *SEC. 2. No reimbursement is required by this act pursuant to*  
4 *Section 6 of Article XIII B of the California Constitution because*  
5 *the only costs that may be incurred by a local agency or school*  
6 *district will be incurred because this act creates a new crime or*  
7 *infraction, eliminates a crime or infraction, or changes the penalty*  
8 *for a crime or infraction, within the meaning of Section 17556 of*  
9 *the Government Code, or changes the definition of a crime within*  
10 *the meaning of Section 6 of Article XIII B of the California*  
11 *Constitution.*